

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

UNITED STATES OF AMERICA §
§
VS. § CRIMINAL NO. G-04-07 (02)
§
ROYAL LEE MAYS §

OPINION AND ORDER

On February 27, 2006, Royal Lee Mays, one of the named Defendants in this cause, filed a “ Motion for Reopening the Time to File an Appeal” in an effort to pursue a direct appeal of his conviction and sentence. The motion will be denied.

On April 19, 2005, Mays pleaded guilty to federal narcotics charges pursuant to a written Plea Agreement. Mays signed the Agreement and declared that he had read it, discussed it with his attorney, and understood it. Significantly, the Agreement contains a provision waiving Mays’ right to appeal unless the District Court upwardly departed from the applicable sentencing guideline range. At Sentencing the District Court adopted the recommendations in the Pre-Sentence Report and found the applicable guideline range to be 135 to 168 months. The Court sentenced Mays to 135 months; no upward departure was assessed. Accordingly, Mays is bound to his obligations under the Plea Agreement. Therefore, there is no basis for authorizing an out-of-time appeal. See United States v. McKinney, 406 F.3d 744 (5th Cir. 2005)

For the foregoing reasons, it is the **ORDER** of this Court that the “ Motion for Reopening the Time to File an Appeal” (Instrument no. 109) of Royal Lee Mays is **DENIED**.

Mays’ request to proceed on appeal in forma pauperis (Instrument no. 111) is **DENIED**; no such motion is necessary for the direct appeal of a criminal case.

DONE at Galveston, Texas, this 1st day of March, 2006.



Samuel B. Kent
United States District Judge